

REMARKS:

Claims 134, 136-138, 142-145, 152-158 and 170-172 are pending in this application.

The Examiner has rejected independent claims 134 and 170 under 35 U.S.C. § 103(a) based on U.S. Patent No. 4,766,088 to Kono, et al. in view of U.S. Patent No. 5,470,771 to Fujii et al. and U.S. Patent No. 5,449,629 to Kajita. Applicant respectfully traverses these rejections.

Applicant hereby incorporates by reference the arguments filed March 28, 2007 in response to the Office Action mailed January 25, 2007.

In addition to the previous arguments, Applicant respectfully submits that the cited art does not teach or suggest all of the limitations of independent claims 134 and 170. Specifically, Applicant submits that the cited art does not teach or suggest the combination of features including, but not limited to, “said second, third, and fourth conductive films each have a conductivity that is substantially the same” as recited in claims 134 and 170.

With respect to Kono and the above-quoted feature, the Examiner states: “Kono et al. does not expressly disclose wherein said second, third, and fourth conductive films each have a conductivity that is substantially the same and that is higher than a conductivity of said first conductive film.” Thus, Kono does not teach or suggest all of the limitations of claims 134 and 170.

With respect to Fujii, the Examiner states: “Fujii et al. discloses forming a floating gate which has a portion with a lower conductivity than other portions of the floating gate and the control gate (see abstract).” The Examiner provides no evidence that Fujii teaches or suggests the feature of: “said second, third, and fourth conductive films each have a conductivity that is substantially the same” as recited in claims 134 and 170. For example, the Examiner admits that: “note that Fujii is relied upon to disclose the first conductive film having a lower concentration than the other films and is not relied upon to show a peripheral transistor or to show third and fourth conductive films that are in contact over their cross-sections.” In the Examiner’s rejections, the Examiner makes no mention of Fujii disclosing second, third, and fourth conductive films each having a conductivity substantially the same.

Additionally, Applicant finds no teaching or suggestion in the disclosure of Fujii to second, third, and fourth conductive films each having a conductivity substantially the same.

Fujii discloses: “A third polysilicon film 20 is formed on the insulating film 19 by the same process as that for the second polysilicon film.” (See col. 4, lines 19-21). Though Fujii teaches using the same process for the second and third polysilicon films, Fujii does not teach or suggest the films having a conductivity that is “substantially the same” as recited in the claims. In addition, Fujii does not teach or suggest a fourth conductive film as recited in the claims.

With respect to Kajita, the Examiner relies on the Kajita reference for disclosing the peripheral transistor with films in contact over their cross-sections. The Examiner states: “Kajita discloses forming a peripheral transistor including films 28,60 in contact over their cross-sections.” The Examiner provides no evidence that Kajita teaches or suggests the feature of “said second, third, and fourth conductive films each have a conductivity that is substantially the same” as recited in claims 134 and 170. Applicant finds no teaching or suggestion in the disclosure of Kajita to this feature of the claims. Additionally, Kajita does not appear to have any disclosure relating to a third or fourth conductive film.

In sum, Applicant submits that the cited art does not teach or suggest, either *individually* or *in combination*, at least the feature of “said second, third, and fourth conductive films each have a conductivity that is substantially the same” in combination with the other features of the claims. Applicant therefore respectfully requests removal of the § 103 rejections with respect to claims 134 and 170, and the claims dependent thereon.

On a related note, Applicant takes issue with the Examiner’s characterization of Applicant’s nonobviousness arguments. At page 4 of the present Office Action, the Examiner suggests that Applicant is merely arguing against references individually rather than combinations of references. It appears that the Examiner is misconstruing Applicant’s arguments. To establish a case of *prima facie* obviousness of a claimed invention, **all the claim limitations** must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (C.C.P.A. 1974), MPEP § 2143.03, (emphasis added) As set forth in the previous response and above, Applicant is arguing that none of the cited references suggests a particular claim limitation. As it is well understood that all claim limitations must be taught or suggested in the cited references, addressing each reference in turn in order to prove this point does not amount to arguing references individually. Rather, this argument serves to prove that even if the references were

combined in the manner suggested by the Examiner, the resultant combination would still lack certain features of the pending independent claims.

Additionally, the Examiner stated that: “With respect to the particular impurity concentrations or thicknesses of the films, generally, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical.” Applicant submits that the particular impurity concentrations or thicknesses are limitations in claims dependent on independent claims 134 and 170, which Applicant believes are presently in condition for allowance. Thus, Applicant withholds presenting any arguments and/or evidence as to the patentability of the particular impurity concentrations or thicknesses claimed until such arguments and/or evidence are required or necessary to the patentability of the dependent claims.

CONCLUSION:

Applicants submit the application is in condition for allowance, and an early notice to that effect is requested.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment, to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 501505/5957-82403/GMS.

Respectfully submitted,

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